

In the claims:

Please amend claim 1 to read as follows:

1. (twice amended) A method for evaluating a whole effluent sample for the presence of cytotoxic substances comprising the steps of:
- (a) obtaining a liquid whole effluent sample for testing, said sample being suspected of containing a plurality of potentially cytotoxic substances;
 - (b) combining a first aliquot of the liquid whole effluent sample directly with a culture of a particle-feeding flagellate; and
 - (c) monitoring the growth rate of the particle-feeding flagellate culture in the presence of the liquid whole effluent sample, wherein a decrease in growth rate of the culture in the presence of the liquid whole effluent sample is indicative of the presence of cytotoxic agents in the liquid whole effluent sample.

REMARKS

This is in response to the Official Action mailed February 18, 2000 for the above-captioned application. Reconsideration of the application in view of the following remarks is respectfully requested.

Claim 1 has been amended to more clearly define the nature of the "whole effluent sample." Specifically, claim 1 has been amended to specifically state that the whole effluent sample is a liquid sample. The amendment is supported, *inter alia*, on page 3, line 4 of the application as filed.

The Examiner has rejected claims 1-15 under the doctrine of obviousness-type double patenting. This is a new ground for rejection, which could have been made in a preceding office action. No change was made to the claims by applicant which necessitated this rejection. Thus, it is improper for the present action to be final. In the event the application is not allowed in view of this response, **withdrawal of the finality of rejection is requested**. Furthermore, Applicant submits that the rejection itself is improper and unnecessary.